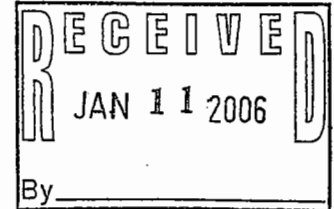


## **EXHIBIT “2”**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CREEDON CONTROLS, INC., a  
Delaware corporation,

Plaintiff,

v.

BANC ONE BUILDING CORPORATION, an  
Illinois corporation; and FOREST ELECTRIC  
CORPORATION, a New York corporation,

Defendants.

Civil Action No. 05-300 JJF

**DEFENDANT BANC ONE BUILDING CORPORATION'S AMENDED  
AND SUPPLEMENTAL RESPONSE TO PLAINTIFF'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the District of Delaware, defendant Banc One Building Corporation ("Banc One") hereby amends and supplements its response to the First Request for the Production of Documents of plaintiff Creedon Controls, Inc. ("Creedon") dated October 4, 2005 (the "Request") as follows:

**GENERAL RESPONSES AND OBJECTIONS**

A. Banc One objects to the Definitions and Instructions of the Request to the extent they seek to impose obligations beyond those imposed pursuant to the Federal Rules of Civil Procedure or the Local Rules for the United States District Court for the District of Delaware.

B. Banc One objects to each and every request to the extent they seek materials prepared in the anticipation of litigation or otherwise call for the disclosure of the

mental impressions, conclusions, opinions and/or legal theories of any attorney for defendants or seek information or documents otherwise protected from discovery under the attorney-client privilege, the work product doctrine, and/or any other applicable privacy, or privilege, immunity or restriction recognized under the law. Any such materials will be appropriately designated in a privilege log, which is being served simultaneously herewith.

C. Banc One objects to each and every request to the extent that it seeks the production of documents or things that is proprietary or otherwise confidential. To the extent that Banc One responds to any such request in whole or in part, such response shall be in accordance with and subject to the terms of an appropriate confidentiality order.

D. Banc One's response to each and every request is made without waiving or intending to waive but rather, to the contrary, preserving and intending to preserve: (1) all objections to the relevance, authenticity or admissibility of any document or thing produced in response to this request and of any information contained therein; (2) the right to object to the use of any such documents or things, including any information contained therein, in any aspect of this action or any other judicial or administrative proceeding or investigation; (3) the right to object at any time to a demand for any further responses to these requests or any other request for the production of documents and things; and (4) the right at any time to supplement or amend this response.

E. The supplying of any document or thing, including any information contained therein, does not constitute an admission by Banc One that such document or thing, including any information contained therein, is relevant, authentic or admissible.

F. Inadvertent disclosure of any information subject to any applicable privilege or doctrine, including but not limited to the attorney-client privilege and the work-

product doctrine, is not intended to be and shall not operate as a waiver of any such privilege or doctrine, in whole or in part, nor is any such inadvertent disclosure intended to be, nor shall it constitute, a waiver of the right to object to any use of such information.

G. Banc One objects to the requests to the extent that they are unreasonably cumulative, duplicative or disproportionate.

H. Discovery in this action is ongoing and Banc One's investigation of its claims and defenses is continuing. Banc One's answers to these requests are based on the facts known to Banc One at this time. Accordingly, Banc One reserves the right to amend, supplement and/or revise these answers as discovery continues and additional information becomes available.

I. Banc One objects to the requests to the extent that they would require Banc One to review back-up tapes and servers for electronic data responsive to plaintiffs' requests. Banc One is in the process of reviewing the computer hard drives in its custody, possession and control for those individuals responsible for supervising the Project for responsive emails and other electronic documents, and will supplement its production with all non-privileged documents responsive to the requests on a rolling basis.

J. The responses are limited to documents in connection with the work performed by plaintiff.

K. Banc One incorporates the foregoing objections into its specific responses set forth below.

RESPONSES AND OBJECTIONS TO REQUESTS

1. Identify and produce all documents which you contend comprise any contract documents between Plaintiff and Defendants and/or between Defendants that related to the Project.

Response and Objections: Banc One objects to this request on the ground that it seeks discovery beyond the scope of Rule 26 and protected by the attorney/client privilege and work product immunity. Subject to those objections and the General Objections, Banc One will produce all non-privileged documents responsive to this request.

2. Identify and produce all correspondence between Plaintiff and Defendants, and/or between Defendants, that relates to the Project.

Response and Objections: Banc One objects to this request on the ground that it seeks discovery beyond the scope of Rule 26 and protected by the attorney/client privilege and work product immunity. Subject to those objections and the General Objections, Banc One will produce non-privileged documents responsive to this request.

3. Identify and produce all correspondence and any other documents between Defendants and any other person that relates to the Project.

Response and Objections: Banc One objects to this request on the ground that it is overbroad, unduly burdensome and seeks discovery beyond the scope of Rule 26 and production of documents not reasonably calculated to lead to the discovery of admissible evidence. Subject to those objections and the General Objections, Banc One will produce non-privileged documents responsive to this request that constitute correspondence between Defendants and any other person that relates to the Project.

4. Identify and produce all applications for payment, schedules of values and the like submitted by Plaintiff to Defendants that relate to the Project.

Response and Objections: Banc One objects to this request on the ground that it is vague, ambiguous, unduly burdensome and seeks discovery beyond the scope of Rule 26 and production of documents not reasonably calculated to lead to the discovery of admissible evidence. Subject to those objections and the General Objections, Banc One will produce all applications for payment and schedules of values submitted by Plaintiff relating to the Project.

5. Identify and produce all internal memoranda, reports, comparisons, summaries, tabulations, analyses or other documents prepared by Defendants or their agents, referring to or relating to the Project.

Response and Objections: Banc One objects to this request on the ground that it is vague, ambiguous, unduly burdensome and seeks discovery beyond the scope of Rule 26. Subject to those objections and the General Objections, Banc One will produce all non-privileged documents responsive to this request.

6. Identify and produce all change order requests, field orders, work tickets, proposals for change in the work or authorizations to perform extra work on the Project whether or not approved or made part of the contract between Plaintiff and Defendants, that relate to the Project.

Response and Objections: Banc One objects to this request on the ground that it is vague, ambiguous, unduly burdensome and seeks discovery beyond the scope of Rule 26. Subject to those objections and the General Objections, Banc One will produce all change order requests, field orders, work tickets, proposals for change in the work or authorizations to perform extra work on the Project, whether or not approved or agreed to, that relate to the Project.



7. Identify and produce all diaries or logs kept by employees of Defendants or their agents or consultants for the Project.

Response and Objections: Banc One objects to this request on the ground that it is vague, ambiguous, unduly burdensome and seeks discovery beyond the scope of Rule 26. Subject to those objections and the General Objections, Banc One will produce any non-privileged diaries or logs kept by Defendants for the Project.

8. Identify and produce all documents that relate to the allegation in your Answer and Affirmative Defenses that:

- a. Plaintiff failed to properly staff the Project;
- b. Plaintiff used inappropriate techniques for performing its work;
- c. Plaintiff's work was defective;
- d. Delay was the responsibility of Plaintiff;
- e. All work performed was within the scope of contract terms and did not qualify as additional work;
- f. Plaintiff failed to fulfill conditions precedent to any entitlement to payment;
- g. Plaintiff did not convey any benefit upon Defendant Forest Electric;
- h. Plaintiff failed to prepare and submit change orders;
- i. Plaintiff failed to complete its work in the required time period;
- j. Plaintiff failed to perform substantial portions of the work;
- k. Plaintiff failed to comply with contract terms, including but not limited to Change Orders and Field Reports;

1. Forest Electric acted as Electrical Trade Manager and/or Construction Manager as agent of Banc One;
- m. Plaintiff executed waivers and releases of liens for work done.

Response and Objections: Banc One objects to this request on the ground that it is vague, ambiguous, unduly burdensome and seeks discovery beyond the scope of Rule 26 and protected by the attorney work product doctrine. Subject to those objections and the General Objections, Banc One will produced any non-privileged documents relating to the affirmative defenses identified in sub-parts (a)-(f), (h)-(k) and (m) of the request.

9. Identify and produce all documents that relate to damages you allegedly incurred, if any, due to Plaintiff's work at the Project, including but not limited to proposals, estimates of repair, canceled checks, analyses, contracts, change orders and the like.

Response and Objections: Banc One objects to this request on the ground that it is vague, ambiguous, unduly burdensome and seeks discovery beyond the scope of Rule 26 and protected by the attorney work product doctrine. Subject to those objections and the General Objections, Banc One will produce all non-privileged documents responsive to this request.

10. Identify and produce all photographs, videotapes and any other such documents that relate to Plaintiff's work at the Project.

Response and Objections: Banc One objects to this request on the ground that it is vague, ambiguous, unduly burdensome and seeks discovery beyond the scope of Rule 26 and protected by the attorney work product doctrine. Subject to those objections and the General Objections, Banc One will produce all non-privileged documents responsive to this request that depict Plaintiff's work on the project.



11. Identify and produce all documents sent by Defendants to any expert witness retained by Defendants, in connection with this litigation.

Response and Objections: Banc One objects to this request on the ground that it seeks information beyond the scope of Rule 26 and protected by the work product doctrine. Banc One reserves the right to supplement its response to this request after it has determined whether it intends to introduce expert testimony at trial.

12. Identify and produce all documents that Defendants intend to introduce as evidence at time of trial.

Response and Objections: Banc One objects to this request on the ground that it seeks information beyond the scope of Rule 26 and the Court's scheduling order in this case, and information that is protected by the work product doctrine. Banc One reserves the right to supplement its response to this Request after it has determined which, if any, documents it intends to introduce at trial.

13. To the extent that they have not been requested above, identify and produce all documents that relate in any way to the Project, including, but not limited to, any of the items referenced below:

- A. Plans;
- B. Specifications;
- C. Drawings;
- D. Change orders (signed and unsigned), proposed change orders, updates, revisions or amendments to the original plans or specifications, whether or not submitted or approved, including any change orders, updates, revisions, or amendments consisting of drawings, photographs, or written material;

E. Payment documents including but not limited to copies of canceled checks and any other record of payment;

F. Payment requests;

G. Bid documents;

H. Bid proposals;

I. Project manuals;

J. Diaries;

K. Daily reports;

L. Field reports (daily, weekly, monthly);

M. Notices of non-conforming work;

N. Certifications of substantial and final completion, including, but not limited to, all corresponding "punch lists" and/or lists of times to be completed or corrected;

O. Bid estimates including work sheets, take-off sheets and analysis;

P. Job record files;

Q. Contractor submittals;

R. Shop drawing files and logs;

S. As-built drawings and plans;

T. Labor reports and records;

U. Internal memorandum, including meeting notes, memos to file, or internal memos to other persons;

V. Equipment reports and records;

W. Logs (daily, weekly, monthly);

- X. Progress and construction reports;
- Y. Progress photographs or videotapes or audio recordings or tapes;
- Z. Design calculations;
- AA. Project concept descriptions;
- AB. Preliminary or schematic drawings and plans;
- AC. Working drawings and plans;
- AD. Inspection and/or testing reports, including, but not limited to, reports or notes on any inspections or testing done by any parties other than you, any inspections or testing done by or on behalf of any financial institution or lender, any electrical inspections or tests, concrete inspections or tests, weld inspections or tests and bolt installation inspections;
- AE. Site visit reports;
- AF. Job meeting minutes, including, but not limited to, minutes for owner, architect, contractor and/or subcontractor meetings, construction manager meetings, safety meetings, inspection meetings and testing meetings;
- AG. The Subcontracts and the Contract(s) together with all contract documents;
- AH. Interviews with persons associated with the design or construction of the Project;
- AI. All documents concerning scheduling, timing, sequencing, projections, CPM schedules, bar charts, timetables, and any updates revisions or amendments, whether or not submitted or approved;
- AJ. Bid tabulations, comparisons and evaluations;
- AK. Change orders, work orders, field orders, proposals, requests for

proposals, or confirmation of field instructions to the original plans or specifications, whether approved, disputed or pending, including any such documents consisting of drawings, photographs or written materials;

AL. Monthly pay estimates, requisitions, certifications and payments;

AM. Subcontractor pay requisitions;

AN. Payroll records;

AO. Laboratory, testing and investigation reports;

AP. All records of actual costs incurred in connection with the Projects, including job cost accounting records, audits, financial statements;

AQ. All comparisons, summaries, tabulations, and analysis comparing costs actually incurred on the Projects with cost originally anticipated for such work;

AR. All comparisons, summaries, tabulations, and analysis comparing costs actually incurred on the Projects with cost originally anticipated for such work;

AS. Notices to proceed;

AT. Material delivery records;

AU. Survey layout reports;

AV. All correspondence or any writing of any kind or inscription between and among the architect/engineer, construction manager, subcontractors, material and equipment suppliers, field representatives, bonding and surety companies, consultants, and any other person, firm or entity concerning or affecting the Project;

AW. Any reports made by any governmental agency or employee thereof;

AX. Any reports made by any federal, county, city, police, state or

other governmental institution;

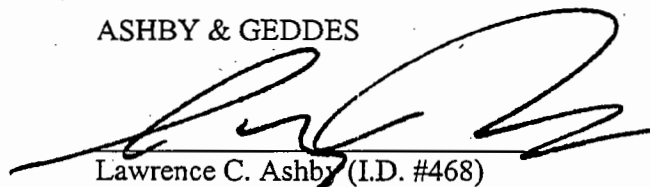
AY. Transcripts, notes, minutes, reports, audio tapes, summaries and other documents or things pertaining to meetings and discussions, formal or informal; and

AZ. Documents concerning the construction, repair, removal, inspection or completion of any work performed by you.

Response and Objections: Banc One objects to this request on the ground that it is vague, over broad and unduly burdensome. Subject to those objections and the General Objections, Banc One states that (A-C, Q, R, S, Z, AA, AB, AC) it will make available for inspection by plaintiff (and copying by plaintiff at its own expense), the plans, specifications, drawings, submittals, shop drawings, as-built drawings and plans, design calculations, project concept descriptions, preliminary or schematic drawings and plans, working drawings and plans for the Project; (D, AK) it will produce all proposed change orders or change orders for the Project and any amendments thereto; (F, AM) it will produce all payment applications submitted by plaintiff, and those portions of the payment applications submitted by Forest to Tishman Construction of Maryland which relate to plaintiff in connection with the Project; (G, O, AJ) it will produce all of the bid documents and proposals submitted by or to plaintiff, and the bid file relating to the Project; (J) it will produce the pages and/or diary entries of any diaries relating to plaintiff's work on the Project; (K-L) it will produce those pages of the daily reports, field reports and project logs that relate to plaintiff's work on the Project; (M) it will produce any notices of non-conforming work relating to plaintiff's work on the Project; (N) it will produce those pages of the punchlists that relate to plaintiff's work on the Project; (U) it will produce those portions of non-privileged internal memoranda that relate to plaintiff's work on the Project;

(V-Y, AE, AF, AO) it will produce those portions of the equipment reports, logs, progress and construction reports inspection or testing reports, site visit reports and/or job meeting minutes that relate to plaintiff's work on the Project; (I) it will produce photographs or videotapes that depict plaintiff's work, or audio recordings or tapes that relate to plaintiff's work on the Project; (AI) it will produce a disc with copy of the Expedition schedules maintained for the entire construction job; (AS) it will produce all notices to proceed with respect to work performed by plaintiff on the Project; (AT) it will produce the relevant pages of any material delivery records relating to work performed by plaintiff on the Project; (AV) it will produce all correspondence relating to the Project; (AW) any reports made by any governmental agency or employee thereof relating to plaintiff's work on the Project; (AX) any reports made by any federal, county, city, police, state or other governmental institution relating to plaintiff's work on the Project; (AY) non-privileged transcripts, notes, minutes, reports, audio tapes, summaries and other documents or things pertaining to meetings and discussions; formal or information relating to plaintiff's work on the Project; and (AZ) non-privileged documents concerning the construction, repair, removal, inspection or completion of any work relating to plaintiff's work on the Project.

ASHBY & GEDDES



Lawrence C. Ashby (I.D. #468)  
Philip Trainer, Jr. (I.D. #2788)  
222 Delaware Ave.  
P.O. Box 1150  
Wilmington, DE 19899  
(302)-654-1888

*Attorneys for Banc One Building Corporation*



*Of Counsel:*

PAUL, HASTINGS, JANOFSKY &  
WALKER LLP

Charles Patrizia, Esq.

Jodi A. Kleinick, Esq.

75 East 55<sup>th</sup> Street

New York, NY 10022

(212) 318-6000

Date: January 10, 2006

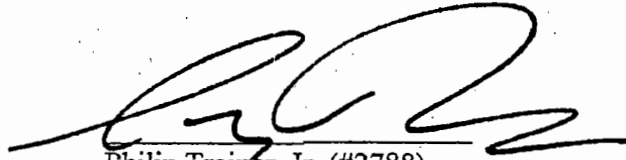
165448.1

**CERTIFICATE OF SERVICE**

I, Philip Trainer, Jr. hereby certify that, on January 10, 2006, I caused a copy of the foregoing Defendant Banc One's Amended and Supplemental Response to Plaintiff's First Request for Production of Documents to be served upon counsel below via electronic filing.

Robert K. Beste, Jr., Esq.  
Cohen, Seglias, Pallas, Greenhall & Furman, P.C.  
1007 Orange Street, Nemours Bldg., Suite 205  
Wilmington, DE 19801

Paul Bradley, Esq.  
McCarter & English  
919 N. Market Street, Ste. 1800  
P.O. Box 111  
Wilmington, DE 19899



Philip Trainer, Jr. (#2788)